IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

FAO No. 131 of 1999.

Judgment reserved on: 26.4.2006

Date of decision : 10.5.2006

Prem Lal Gupta ……. Appellant

Versus

Suman ……. Respondent

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: **Mr. R.K. Bawa, Sr. Advocate, with Mr. R.P. Singh, Advocate.**

For the respondent: **Mr. Ramakant Sharma, Advocate.**

Surjit Singh, Judge

Appellant Prem Lal Gupta is aggrieved by the judgment and decree dated 25.7.1998 of the learned District Judge, whereby his petition for dissolution of his marriage with the respondent, on the ground of cruelty, has been dismissed.

2. Facts, relevant for the disposal of the appeal, may be noticed. Appellant filed a petition, under Section 13 (1) (1a) of the Hindu Marriage Act, seeking dissolution of his marriage with the respondent, pleading that the marriage was solemnized on 19.2.1984 according to the

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Whether reporters of Local Papers may be allowed to see the Judgment?

rites and customs applicable to Hindus and after the marriage, the parties lived within the jurisdiction of the Court upto March, 1991 and on 7.11.1984 a male child was also born. It was alleged that the respondent had been treating the appellant with cruelty from the very beginning. Following instances were stated as acts of cruelty on the part of the respondent:-

(i) Respondent is a haughty and ill-tempered lady and from the very beginning she had been insulting the appellant as the appellant at the time of the marriage was unemployed, while the respondent herself was employed in some Government department.

(ii) The respondent started suspecting fidelity of the appellant and spread rumors that he was having illicit relations with his brother's wife, a lady colleague and several other women.

(iii) She would always quarrel with the appellant and even hurl abuses in the presence of his relatives and friends to lower his esteem.

(iv) Once when the son of the parties was in infancy, the respondent left him (the son) at her parents' place, without consulting the appellant.

(v) The respondent did not bestow the normal love and affection on the son of the parties, with the result that the parents of the appellant had to take care of the child and to bring it up.

(vi) Once in the year 1991, on the occasion of Shivratri a ritual known as **Udhyapan**, was being performed at the parental house of the appellant. All those present on the occasion performed the **Pooja** in couples. The respondent, however, refused to join the appellant in performing the **Pooja** in the presence of his brothers, parents, neighbours

and other relatives numbering about forty to fifty, who had been invited for the occasion and this caused severe mental torture to the appellant.

(vii) In connivance with the respondent, rather at her behest, a brother of the respondent made a complaint to the Director of the department, in which the appellant got employed after marriage, that he was having illicit relations with a named female colleague, employed in the same department and at the same station, with the result that the appellant was transferred from Shimla District to Nahan and the engagement of the said woman colleague of the appellant was broken by her fiancé.

(viii) The appellant had a friend with whom he entered into a contract for construction of a flat for him and paid him some amount of money in advance and once that friend, along-with his wife, went with the appellant to the main bus stand at Shimla to see him off as he was going to Calcutta and in the meanwhile the respondent reached there and started publically accusing the wife of that friend of having an affair with the appellant.

(ix) In June 1991 the appellant invited his sister and brother-in-law to his place in Totu for dinner, the respondent not only did not cook the food but also insulted the appellant in the presence of his sister and brother-in-law.

(x) Once in the year 1992, when the appellant was living at Nahan because of his transfer to that place, on a complaint made by a brother of the respondent, the respondent went there in the company of her brother and made enquiry with the Chowkidar of the rest house and one woman living in the neighbourhood of the appellant whether any female visited him at his place and whether he had any female colleagues.

(xi). The petition was filed in July 1993 and it was alleged that the parties had been living separate since March, 1991.

3. Respondent filed reply, wherein she raised a number of preliminary objections. It was alleged that the petition was not competent, the appellant wanted to take benefit of his own wrongs and there was avoidable delay in filing the petition. All the specific allegations of cruelty were denied. It was specifically denied that the respondent did not join the appellant in the religious ceremony that took place at his parents' place, the respondent did not look-after and take care of her son or she left her son during his infancy with her mother. It was alleged that no baseless allegations had ever been made by the respondent. It was also alleged that in fact it was the appellant who had treated the respondent with cruelty.

4. The learned District Judge framed the following issues:-

> "1. Whether the petitioner has been treated with cruelty by the respondent, if so, its effect? OPP
> 2. Whether the present petition is not maintainable as the same has not been filed as per the Rules? OPR
> 3. Whether the petition is not properly verified in accordance with law? OPR.
> 4. Relief."

5. Issues No. 1 and 2 were answered against the appellant. The respondent did not press issue No. 3. Because of the findings on issues No. 1 and 2, the learned District Judge dismissed the petition.

6. During the course of hearing of the appeal, it was admitted by the learned counsel representing both the sides, that the parties have been living separate since 1991 and that there was absolutely no chance of their living together. This Court also tried twice for conciliation, once on

16.8.1999 and again on 8.8.2005 and it was felt both the times that conciliation was not possible. Again an attempt was made to get the marriage dissolved by consent of the parties by treating the petition as one under Section 13-B of the Hindu Marriage Act, but the respondent was not willing for dissolution of marriage. It is in this background that the evidence on record needs to be appreciated.

7. The very fact that the parties have been living separate for the last about fifteen years and they are not willing to live together even now, indicates that there is some serious problem. According to the appellant, the problem is that the respondent had been treating him with cruelty and fed up with the repeated acts of insult and false accusations and allegations, he has started living separately. The wife had though alleged that it is not she but the appellant who has treated her with cruelty but no act of alleged cruelty is disclosed by her either in the reply or in her testimony, whereas the appellant has given a long list of such acts, as have been summed up here-in-above while stating the facts. Some of the alleged acts of cruelty stand established from the circumstances of the case. Admittedly, the son of the parties, who is now twenty-two years of age, has been living not with the respondent, who is the mother, but with the appellant or his parents from the very beginning.

8. Regarding the instance of February, 1991, when the respondent allegedly did not join the appellant in performing **Pooja,** appellant examined, besides himself, PW-2 Gopal Chand Gupta, one of his cousins, PW-3 H.R. Gupta, his uncle, PW-5 Labh Chand, one of the participants in the function, PW-6 Kamlesh Kumar, a younger brother of the appellant, and PW-7 Promila Gupta, sister-in-law of the appellant, all of whom have stated with one voice that the respondent did not join the

appellant in performing the **Pooja** though all other couples performed the **Pooja** jointly as per custom. Conflicting suggestions were put to the witnesses on behalf of the respondent in the course of their cross-examination, which fact indicates that the suggestions put to them are not correct. To PW-2 Gopal Chand it was suggested that the appellant and the respondent had performed the **Pooja** together. To H.R. Gupta PW-3 it was suggested whether the respondent had not refused to perform the **Pooja** in his presence, but no suggestion was put to him that the appellant and the respondent had performed the **Pooja** together. Similar suggestion was put to PW-5 Labh Chand. To PW-6 Kamlesh Kumar, a brother of the appellant, it was suggested that the appellant had not asked the respondent to join him in the performance of **Pooja**, which implies an admission on the part of the respondent that she did not join the appellant in the performance of the **Pooja**. There does not seem to be any reason to disbelieve so many witnesses examined on the point by the appellant. The respondent herself, while in the witness box as RW-6 made too vague a statement with respect to this part of the incident. She stated that when-ever there had been any Shivratri **Poojan** in the family, she performed the **Pooja** with her husband. She did not specifically say that on the occasion of Shivratri of 1991 she had performed the **Pooja** jointly with the appellant as other couples had done.

9. As regards the averment that the respondent accused the appellant of having illicit relations with his brother's wife, the appellant while in the witness box as PW-16, specifically stated that the respondent accused him of having illicit relations with his elder sister-in-law and younger sister-in-law. His younger sister-in-law, i.e. wife of his younger brother Promila Gupta, appeared as PW-7 and stated that the respondent

had accused her of having illicit relations with the appellant. Appellant's testimony pertaining to this accusation was not subjected to cross-examination. Thus the same remains unchallenged and there should be no reason to disbelieve the same especially when it is corroborated by the testimony of PW-7 Promila Gupta.

10. As regards the allegation that false accusation of illicit relations between the appellant and one of his colleagues, a Hindi Instructor, was made by a brother of the respondent at her instance, the same is proved from the testimony of RW-4 Hem Raj Gupta, the brother of the respondent herself. This witness in the cross-examination admitted that he had written complaint Ext. PX-4/B and with this complaint he had sent four annexures, copies whereof are Exts. PX-4/C, PX-4/D, PX-4/E and PX-4/F. Ext. PX-4/B is complaint addressed by RW-4 Hem Raj, brother of the respondent, to the Director of Industries, under whom the appellant was employed. The complaint is dated 15.4.1992. In the complaint it is alleged that the appellant had started beating the respondent in the year 1989 and it appeared that it was at the instance of one Hindi Instructor, because the respondent happened to lay hand on a letter written by the said lady to the appellant. Copy of that letter was sent along-with the complaint. This letter purports to have been written by the appellant to the said Hindi Instructor, wherein it was suggested that she should break her engagement with some other person and continue to have the affair with the appellant, which started some eight years back. The appellant, when in the witness box, was not confronted with this letter. The respondent also, while in the witness box, did not say that she happened to lay hand on this letter and gave it to her brother. In other words, it is not the plea of the respondent that the letter is genuine. The

brother of the respondent, as already noticed, admits that he had sent a complaint Ext. PX-4/B and with that complaint he sent the said letter Ext. PX/4-D also. All this shows that at the instance of the respondent, her brother made an unfounded allegation against the appellant to his employer resulting in an enquiry against the appellant and ultimately his transfer to a far off place. Making an unfounded allegation of adultery by one partner in marriage against the other by itself is an act of cruelty and it becomes graver when the allegation is conveyed to the head of the department, in which the partner, accused of adultery, is employed.

11. During the course of trial, the respondent made a wanton allegation that the appellant and his parents used to harass her in connection with demand for dowry. She made this allegation while appearing as her own witness. The allegation, on the face of it, is false, because it does not find mention in her written reply. Making such an allegation itself is an act of cruelty.

12. The above stated position apart, admittedly the parties have been living separate since 1991. This Court made efforts twice to bring about rapprochement between the parties but it was felt that the same was not possible. The parties are admittedly unable to live together. This is a clear case of irretrievable breaking down of the marriage. The Hon'ble Supreme Court in **Naveen Kohli vs. Neelu Kohli,** (JT 2006 (3) SC 491), has held that where the parties have separated and the separation continues for sufficient length of time and one of them presents a petition for divorce, it can well be presumed that the marriage has broken down. It has further been held that where the marriage has been wrecked beyond the hope of salvage, public interest lies in recognition of the fact.

13. In the case before the Hon'ble Supreme Court the parties had been living separately for more than ten years. A large number of criminal and civil cases were going on between the parties. It was held that the marriage between the parties was defunct de facto and that the public interest and interest of all concerned lay in declaring the same defunct de jure. It was further held that the High Court ought to have visualized that preservation of such marriage was totally unworkable, which had ceased to be effective and was a source of misery for the parties. It was also held that in such a situation declining a decree of divorce would be disastrous for the parties.

14. The ratio of the aforesaid judgment of the Hon'ble Supreme Court is applicable to the facts of the present case on all fours. Otherwise also, as discussed here-in-above, several acts of cruelty, alleged in the petition, stand established. Therefore, the appeal is accepted, the decree of the learned District Judge, dismissing the petition for dissolution of marriage, is set aside. Consequently the petition, filed by the appellant for dissolution of marriage, is allowed and decree of divorce, dissolving the marriage between the appellant and the respondent, is passed.

May 10, 2006 (BC) **(Surjit Singh)**
Judge